

KCB

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER: WQ 97-09

In the Matter of the Petitions of
**LLOYD CARTER AND PATRICK PORGANS,
BAY INSTITUTE OF SAN FRANCISCO, ET AL.**
AND
UNITED STATES FISH AND WILDLIFE SERVICE
for Review of Waste Discharge Requirements
Adopted by and Environmental Impact Reports Certified by the
California Regional Water Quality Control Board,
Central Valley Region,
for 14 Tulare Lake Basin Agricultural Drainage Dischargers.

SWRCB/OCC Files A-858, A-858(a) and A-858(b)

BY THE BOARD:

Stone Land Company, Inc. (Stone) and the United States Fish and Wildlife Service (Service) recently signed a settlement agreement covering Stone's operation of an agricultural drainage evaporation pond in the Tulare Lake Basin. Stone has requested that the State Water Resources Control Board (State Water Board or Board) modify a previous Board order, remanding the waste discharge requirements issued to Stone by the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board), to conform with the settlement agreement. This order grants Stone's request.

I. BACKGROUND

In 1993 Patrick Porgans and Lloyd Carter, the Bay Institute of San Francisco and other environmental groups, and the Service filed petitions with the State Water Board for review of the waste discharge requirements, and related

environmental impact reports (EIRs), adopted by the Regional Water Board for a number of agricultural drainage evaporation pond operators in the Tulare Lake Basin. These operators included Stone. After holding several days of evidentiary hearings in 1995, the Board eventually adopted Order WQ 96-07 remanding the waste discharge requirements and EIRs for five operators, including Stone, to the Regional Water Board for reconsideration.

The State Water Board excluded a number of operators from Order WQ 96-07 because they had previously entered into settlement agreements with the Service covering operation of their evaporation ponds. At the request of both the Service and the affected operators, the State Water Board had accepted these agreements, made conforming revisions to the operators' waste discharge requirements, and declined further review of their requirements and associated EIRs.¹ Stone has recently entered into a similar agreement with the Service and requests that this Board, likewise, accept the agreement and exclude Stone's operation from further Regional Water Board reconsideration under Order WQ 96-07.

II. DISCUSSION

The Board has previously stated its desire to support the voluntary resolution of differences between parties before the Board. Consistent with this desire, the Board has decided to treat Stone like the other settling parties in this case. The Board will, therefore, grant Stone's request to accept the settlement agreement, revise Order 93-156, and revise our previous order remanding this matter to the Regional Water Board.

¹ See State Water Board Resolutions 95-37 and 95-46, as amended by Resolution 96-020.

III. ORDER

IT IS HEREBY ORDERED that the State Water Board accepts the Stone settlement agreement, which is attached to this Order.

IT IS FURTHER ORDERED that Regional Water Board Order 93-156 is hereby modified in accordance with the Stone settlement agreement.

IT IS FURTHER ORDERED that Order WQ 96-07 is hereby revised to delete Stone from the list of operators whose waste discharge requirements and EIRs were remanded to the Regional Water Board for reconsideration.

CERTIFICATION

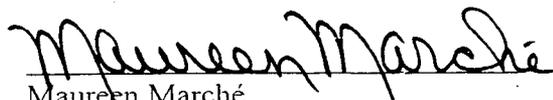
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 1997.

AYE: John Caffrey
James M. Stubchaer
Marc Del Piero
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board

**SETTLEMENT AGREEMENT AND STIPULATION
FOR ORDER OF STATE WATER RESOURCES CONTROL BOARD
MODIFYING ORDER NO. 93-156 ADOPTED BY THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION ON AUGUST 6, 1993**

This Settlement Agreement and Stipulation for Order Modifying Order No. 93-156 (Order) adopted by the California Regional Water Quality Control Board, Central Valley Region ("RWQCB") on August 6, 1993 ("Agreement"), is entered into on this ____ day of August, 1997, by and between STONE LAND COMPANY, INC. ("STONE") and THE UNITED STATES FISH AND WILDLIFE SERVICE ("SERVICE").

WHEREAS, STONE has constructed an evaporation basin ("Basin") for the disposal of subsurface agricultural drainage water. The Basin is approximately 210 acres divided into three cells in Section 34 of T 18S, R 19E, MDB&M. The relative sizes and locations are shown on Attachment A, which is incorporated herein and made a part of this Order. The Basin receives saline drainage water from approximately 2,000 acres of tile-drained farmland; and

WHEREAS, STONE submitted technical reports and environmental documentation to the RWQCB in support of its request for Waste Discharge Requirements ("WDRs") to operate an agricultural subsurface drainage program on its farm west of Lemoore in Kings County; and

WHEREAS, the RWQCB issued WDRs to STONE on August 6, 1993 in the form of Order No. 93-156. Such Order required STONE to, among other things,

conduct monitoring, remove attractive wildlife habitat by minimizing vegetation in the Basin, maintain minimum water depths in the Basin, and schedule levee maintenance to avoid adverse impacts to nesting birds.

WHEREAS, the SERVICE and other petitioners appeared and testified to the RWQCB that, among other things, the requirements of WDRs for evaporation ponds located in the Tulare Lake Basin were insufficient;

WHEREAS, the SERVICE and other petitioners filed petitions with the State Water Resources Control Board ("State Board") requesting, among other things, that those orders be revoked or modified to require that additional alternative habitat and compensation habitat be provided; and

WHEREAS, the State Board, after a hearing on the matter, has referred STONE's WDRs back to the RWQCB for further review; and

WHEREAS, based upon data collected at the Basin and elsewhere, the Service has prepared the Alternative Habitat Protocol USFWS for Drainwater Evaporation Basins, March, 1995, ("Alternative Habitat Protocol"), and the Compensation Habitat Protocol USFWS for Drainwater Evaporation Basins, March, 1995, ("Compensation Habitat Protocol"), (collectively, "Protocols"); and

WHEREAS, based on the 10 eggs collected in May of 1997 that had a geometric mean selenium concentration of 2.4 ppm (dry wt), which is below the background mean threshold of 3.0 ppm (dry wt), the Protocols do not specify any requirement for alternative or compensation habitat for the Basin; and

WHEREAS, because of the unique circumstances at the STONE Basin, STONE and the SERVICE have agreed that STONE will continue to meet the requirements of RWQCB Order No. 93-156 which requires STONE to monitor selenium, water quality, and wildlife.

NOW, THEREFORE, BE IT RESOLVED, that based upon the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. STONE will:
 - a. Comply with Order No. 93-156, and as modified by the State Board or Regional Board from time to time thereafter;
 - b. Continue monitoring and reporting of all drainage and wildlife activities as required by Order No. 93-156, and as may be modified by the State Board or Regional Board. STONE will provide copies of all reports to the Service at the time of submittal to the RWQCB;
 - c. If, as a result of selenium monitoring, it is determined that selenium concentrations have increased in the Basin, STONE will agree to apply and comply with the Protocols, or any revisions thereof, that have been publicly reviewed and approved of by the State Board or Regional Board.
 - d. By this Agreement and otherwise, request and diligently pursue the modification by the RWQCB of STONE WDRs on or before

September 15, 2000, and every three (3) years thereafter by September 15 of that year if Alternative and Compensation Habitat requirements should become necessary due to selenium contamination;

- e. Provide prior notice to the Service of its intent to seek modification of its WDRs for any reason; and
- f. Not seek to expand or modify its agricultural drainage activities if such expansion or modification would result in the discharge to Basin of new drainage containing 20 Ug/l or more total recoverable selenium.

2. The SERVICE will:

- a. By this Agreement and otherwise, request the State Board to issue an order implementing the provisions of this Stipulation and modifying Order No. 93-156;
- b. Cooperate with STONE and the RWQCB in evaluating monitoring data on or before September 15, 2000 and every three (3) years thereafter;
- c. Review wildlife monitoring and sampling procedures undertaken at STONE's Basin to ensure technical accuracy and provide subsample verification as a control and validation

measure, subject to the condition that the SERVICE has adequate funding to conduct such activities; and

- d. If, based on further scientific data or studies generated or conducted by the SERVICE or other qualified scientists, the SERVICE undertakes to revise the Protocols to more accurately reflect the amount and/or type of Alternative and/or Compensation Habitat required to adequately mitigate wildlife impacts caused by the operation of agricultural drainage water evaporation basins, the SERVICE shall provide prior notice to STONE so that all parties are given the opportunity to provide input to any such revisions to the Protocols.

3. The parties agree that this Agreement will have no effect unless and until the State Board adopts an order implementing this Agreement in its entirety.

4. Except with respect to obligations created by or arising out of this Agreement, this Agreement represents the complete and final settlement between the parties regarding any and all claims regarding the issuance of Order No. 93-156 by the RWQCB on August 6, 1993. Each of the parties acknowledges that it has not relied on any promise, representations, or warranty, express or implied, not contained in this Agreement.

5. The parties agree to bear their own costs, expenses and attorneys' fees with respect to this Agreement and all claims, actions or proceedings connected

with the issuance of Order No. 93-156 by the RWQCB.

6. It is expressly understood and agreed that this Agreement has been freely and voluntarily entered into by the parties and that this Agreement may not be altered, amended, modified or otherwise changed except by a writing executed by a duly authorized representative of each of the parties.

7. If any portion of this Agreement is declared invalid in an action brought by a non-party, the remainder of the Agreement shall continue to be valid and enforceable.

8. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, officers, employees, agents, affiliates, successors and assigns of each of the parties.

9. All parties represent and warrant that they have reviewed the terms of this Agreement and are fully informed of their rights.

10. This Agreement shall in all respects be interpreted, enforced and governed by and under laws of the State of California, and any applicable federal law(s).

11. Neither this Agreement nor any negotiations or proceedings connected herewith shall be deemed to constitute an admission or concession by any party for any purpose, nor shall this Agreement or the negotiations or proceedings connected herewith be deemed to constitute a waiver of any legal position which any of the

parties hereto might otherwise assert in any context other than an action to enforce this Agreement.

12. This Agreement may be executed in counterparts and each is hereby declared to be an original, all of which shall constitute one and the same Agreement.

13. Each party separately and for itself warrants and represents that the person signing below on its behalf is duly authorized to execute this Agreement.

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement.

STONE LANE COMPANY

Dated: August 4, 1997

By: _____

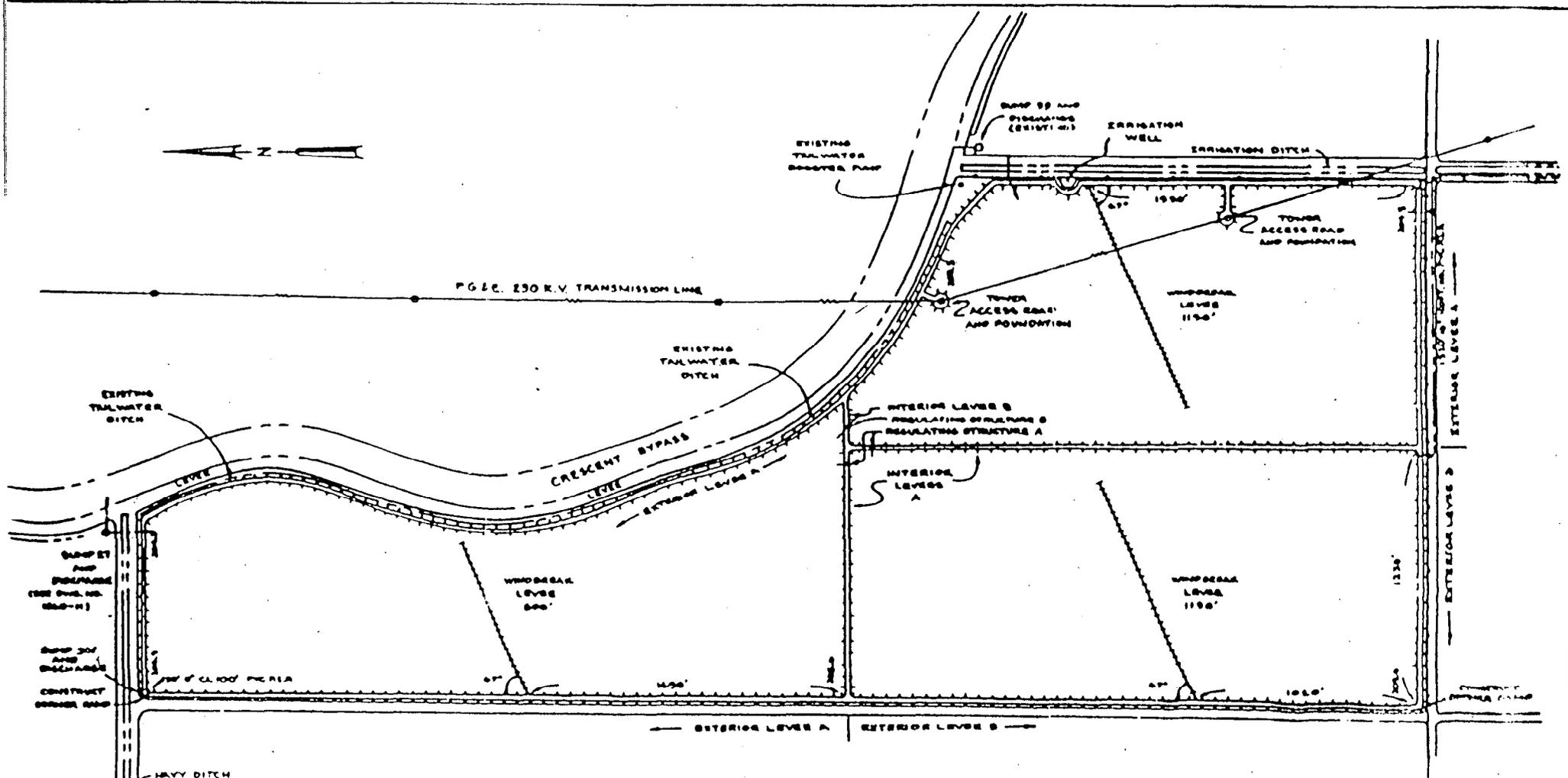

JACK STONE

UNITED STATES FISH & WILDLIFE SERVICE

Dated: ~~August~~ ^{October} 3, 1997

By: _____


WAYNE WHITE,
Sacramento Office Field Supervisor



NO.	REVISION	BY	DATE
1	AS BUILT	L.B.	10/12/04

JM	JULIANO, INC. FRESNO, CALIFORNIA (509) 228-9792	
	STONE LAND CO. EVAPORATION BASIN	
DESIGNED BY: M.D.		
DATE: 4/20/04		D.W.G. NO.: 1260-9
SCALE: 1/4" = 100'		

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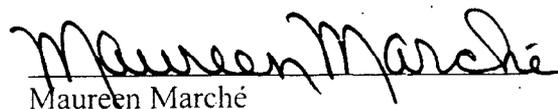
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ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board

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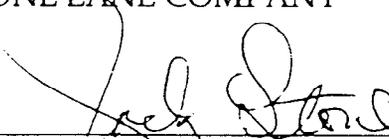
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IN WITNESS WHEREOF, the undersigned hereby execute this Agreement.

STONE LANE COMPANY

Dated: August 4, 1997

By: 
JACK STONE

UNITED STATES FISH & WILDLIFE SERVICE

Dated: ~~August~~ ^{October} 3, 1997

By: 
WAYNE WHITE,
Sacramento Office Field Supervisor

M
 JALON INC
 FRESNO, CALIFORNIA
 1982 198-8788

STONE LAND CO.
EVAPORATION BASIN
 DESIGNED BY: M.D.

DATE: 4/28/84
 O.M. NO. 1260-9

NO	REVISION	BY	DATE
1	AS BUILT	L.B.	10/1/84

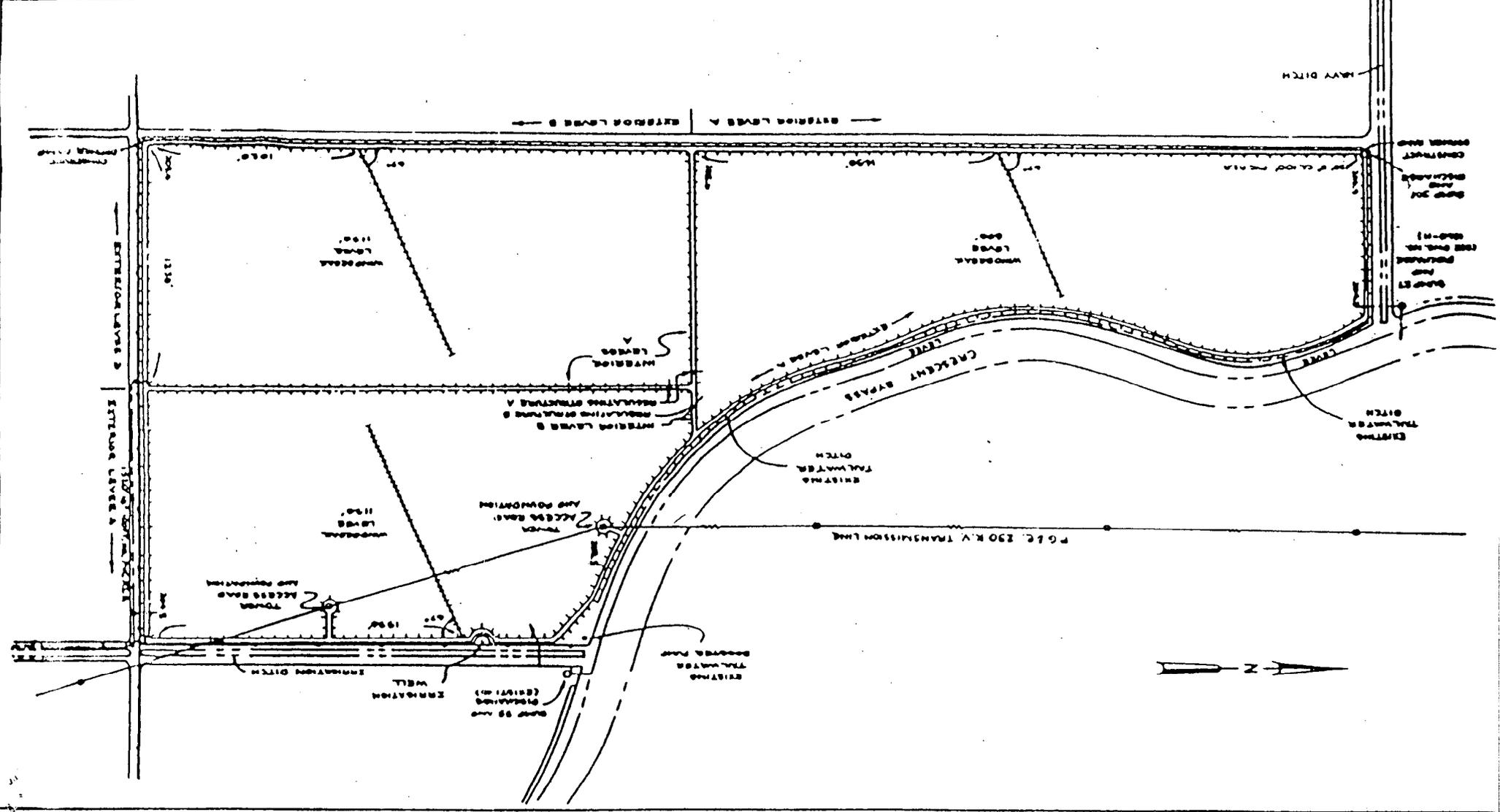


EXHIBIT A